

MICHIGAN DEPARTMENT OF CORRECTIONS <b>POLICY DIRECTIVE</b>		EFFECTIVE DATE 03/01/13	NUMBER 06.06.100
SUBJECT PAROLE VIOLATION PROCESS		SUPERSEDES 06.06.100 (02/26/07)	
		AUTHORITY MCL 393.501 <i>et seq</i> ; 791.238 -791.240a; 800.33; Administrative Rule 791.7740 - 7750	
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## POLICY STATEMENT:

Parolees must comply with all rules and special conditions issued by the Parole Board. Parole may be revoked whenever a parolee violates a rule or condition of parole, as set forth in this policy.

## POLICY:

### GENERAL INFORMATION

- A. A parolee whose hearing is totally impaired or whose hearing is so seriously impaired that his/her primary means of communication is through lip reading, sign language, finger spelling, or reading must be provided with an interpreter at parole violation hearings, including preliminary parole violation hearings and mitigation hearings, consistent with the requirements set forth in MCL 393.502 *et seq*. An interpreter also shall be provided at such hearings to a parolee who is unable to communicate in English.
- B. If a parolee approaching his or her potential maximum date is believed to have violated a condition of parole, the parole violation process set forth in this policy will be expedited to ensure it is completed prior to that date. Under no circumstances shall a parolee be held on pending parole violation charges beyond his/her maximum discharge date.
- C. If parole is revoked by the Parole Board, the Parole Board chairperson may forfeit up to all of the parolee's good time and/or disciplinary credits which accumulated up to the date of the parole violation for which parole was revoked, as set forth in PD 03.01.100 "Good Time Credits" and PD 03.01.101 "Disciplinary Credits". If parole was revoked for more than one violation, the date of the latest parole violation shall determine the amount of accumulated credits available for forfeiture. Any forfeiture by the Parole Board must be ordered prior to the potential maximum date. However, the Time Review & Disposition form (CSX-482) may be completed after the potential maximum date. Good time and/or disciplinary credits cannot be forfeited by the Parole Board unless there has been a finding of parole violation by a Parole Board member or hearing officer.
- D. A parolee shall receive credit on the sentence(s) for which s/he is being supervised for any period of time s/he is held in custody while on parole.
- E. Whenever a parolee misses a scheduled in-person contact or telephone report or there is other reason to believe that a parolee has fled supervision, a prompt investigation shall be conducted to determine if s/he has fled supervision and should be declared a parole absconder.
- F. A parolee shall not receive credit on the sentences for which she is being supervised from the date s/he was declared a parole absconder to the date s/he either returns to supervision or is taken into custody, whichever occurs first.

### STAFF RESPONSE TO PAROLE VIOLATION

- G. A Parole Violation Response Guideline form (CFJ-175) shall be completed by the field agent for each parolee under his/her supervision whenever there is evidence to support one or more charges of parole violation. The form shall be completed for a parolee who is not in custody as soon as such evidence is available. For a parolee who is being held in custody for any reason, the form shall be completed as soon as the parolee is being held solely as an alleged parole violator (e.g., criminal charges disposed of or bond posted).

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- H. The Parole Violation Response Guideline form shall be used to assist in determining the action to take regarding a purported violation of parole. The nature of the violation and the parolee's statistical risk levels, criminal history and prior supervision factors shall be considered when making this determination. A parolee shall be returned to custody for parole violation processing in accordance with this policy if s/he is charged with violating a condition of parole prohibiting ownership or possession of a firearm, including having a firearm under his/her control, or being in the unauthorized company of a person who the parolee knew to possess a firearm absent mitigating circumstances. For purposes of this policy, a firearm includes a simulation of a firearm if owned or possessed because of its resemblance to a firearm or if used or threatened to be used as a firearm.

#### PAROLE VIOLATION WARRANT, ARREST AND DETAINER

- I. If there is reason to believe that a parole violation has occurred, a Parole Violation Warrant (CFJ-111) may be issued by the FOA Deputy Director.
- J. If a parolee is believed to have violated a condition of parole and a return to custody will be recommended if probable cause is established, the parolee shall be arrested on the charges and held in custody pending completion of the parole violation process.
- K. If a parolee is held in custody on either a parole violation charge or a criminal charge which may result in the issuance of parole violation charges, the field agent shall ensure that a Parole Detainer (CFJ-108) is filed with the law enforcement agency holding the parolee. Prior to filing the detainer, the field agent shall ensure that the parolee has been properly identified. If an alleged parole violator is held in custody out-of-state, return processing shall be handled by the Manager of the Parole Services Section in the Office of Parole and Probation Services.

#### PRELIMINARY PAROLE VIOLATION HEARING

- L. A parolee who is charged with violating a condition of parole is entitled to a preliminary parole revocation hearing conducted pursuant to Administrative Rule 791.7740 through 791.7750 to determine if there is probable cause to believe that s/he violated parole except under the following circumstances:
1. The parolee has been bound over to the Circuit Court on a criminal charge for which s/he also is charged with parole violation. In such cases, probable cause for that parole violation charge is established based on the court's action. This does not apply if the parolee waived the preliminary examination in District Court.
  2. The parolee has been convicted of a criminal charge for which s/he also is charged with parole violation. This includes a conviction by trial or by guilty or nolo contendere (i.e., no contest) plea. In such cases, probable cause for that parole violation charge is established based on the conviction.
  3. A formal parole violation hearing is conducted in lieu of the preliminary parole violation hearing. In such cases, notice shall be provided as required pursuant to MCL 791.240a.
- M. Unless the parolee waives the preliminary parole violation hearing or requests a postponement in writing, the preliminary parole violation hearing shall be conducted within ten calendar days after the parolee is arrested and becomes available for return to the Department. The FOA Deputy Director or designee may establish timeframes by which the hearing shall be conducted for parolees not available for return to the Department. A parolee becomes available for return at the point when s/he is held in custody solely due to the parole violation charge; i.e., not being held in custody also due to a criminal charge or to serve a jail sentence. The FOA Deputy Director shall be notified in writing if the preliminary parole violation hearing is not conducted within ten calendar days as required above. In such cases, the hearing will be conducted as soon as possible; the parolee shall not be released pending disposition of the hearing.
- N. Prior to the preliminary parole violation hearing, the parolee shall be provided the following:
1. A brief description of each condition of parole which the parolee is alleged to have violated.

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2. An explanation of the circumstances under which s/he is entitled to a preliminary parole violation hearing.
  3. Notification of whether a preliminary examination or criminal conviction will be used to establish probable cause in lieu of conducting the hearing.
  4. An explanation of the circumstances under which the parolee may have attorney representation at the preliminary parole violation hearing, as set forth in Administration Rule 791.7745.
- O. Whenever a parolee requests to have attorney representation at the preliminary parole violation hearing, the agent shall promptly convey that information to the hearing examiner. Prior to the hearing, the hearing examiner shall review the request and any related substantiating facts or evidence. Based on that analysis, the hearing examiner shall determine if the parolee may have attorney representation, consistent with the requirements set forth in Administrative Rule 791.7745. If the request is denied, the reason for the denial shall be specifically stated on the Preliminary Parole Violation Hearing Report of Findings (CFJ-185). If the request is approved, the parolee shall be permitted to retain an attorney or, if the parolee is indigent, an attorney shall be appointed in accordance with procedures issued by the FOA Deputy Director.
- P. The parolee shall be provided at least 48 hours written notice of the time, date, and location of the preliminary parole violation hearing. At the hearing, the parolee shall be allowed the following:
1. An opportunity to be heard by a hearing examiner who has had no prior direct involvement in the matter at issue at the hearing.
  2. Disclosure of the evidence against him/her.
  3. The opportunity to testify and present relevant witnesses and documentary evidence.
  4. The opportunity to confront and cross-examine adverse witnesses unless the hearing examiner determines on the record that a witness may be subjected to risk of harm if his/her identity is revealed.
- Q. Based on the evidence presented at the hearing, the hearing examiner shall determine whether probable cause exists that the parolee violated a condition of parole. That determination, along with a summary of the evidence presented and the basis for the determination, shall be documented on a Preliminary Parole Violation Hearing Report of Findings (CFJ-185).
- R. If probable cause is found not to exist, the parolee shall be reinstated on parole. If probable cause is found to exist, the Preliminary Parole Violation Hearing Report of Findings shall be referred to the appropriate Parole Violation Specialist in accordance with OP FOA 06.06.115 "Parole Violation Processing". Cases in which the parolee waived the preliminary parole violation hearing and in which probable cause was determined based either on the parolee being bound over to Circuit Court or a criminal conviction also shall be referred to the Parole Violation Specialist. If the Parole Violation Specialist believes that the parolee's parole should be revoked due to the parole violation charges, s/he shall ensure that the Parole Services Section is contacted. The Parole Services Section shall prepare the case for revocation processing as directed by the Section Manager. The Parole Services Section shall screen the case in accordance with criteria established by the FOA Deputy Director to determine whether the parolee should be returned to custody or if other appropriate action should be taken.

#### PAROLE VIOLATION HEARING

- S. A parolee convicted of a felony while on parole who receives a new sentence to be served with the Department shall be found to have violated parole based on that new conviction and sentence. A parole violation hearing is not required.
- T. A parolee returned for a parole violation hearing shall be provided the following prior to the hearing:
1. A copy of the completed Parole Violation Report (CFJ-110).

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2. A reading of the parole violation charges pending against him/her.
  3. Notice that s/he is entitled to a hearing. This shall include notice that if the parolee pleads guilty or no contest to a parole violation charge, or has been convicted of an offense which formed the basis for a parole violation charge, that s/he is entitled to a hearing only on the issue of mitigation.
  4. Notice that s/he may have attorney representation at the hearing and that, if indigent, s/he may request the Department to appoint and pay for the attorney.
  5. Notice that s/he may waive the parole violation hearing, provided the violation is supported either by a criminal conviction or is uncontested by the parolee.
- U. A parolee may plead guilty or no contest to one or more of the pending parole violation charges before a Parole Board member, A Parole Violation Hearing Specialist or a hearing officer with the Department of Licensing and Regulatory Affairs. If the Parole Board member or hearing officer accepts the plea, or the violation is sustained by a criminal conviction, only a hearing on the issue of mitigation will be scheduled. If the parolee waives the hearing on mitigation in writing, s/he will be provided an opportunity to present evidence in mitigation to the Parole Board member or hearing officer who accepted the plea; however, witness testimony and attorney representation will be allowed only at a hearing. A written report will be prepared by the Parole Board member or hearing officer accepting the plea which summarizes the uncontested charges and any mitigation presented, along with a recommendation whether parole should be revoked based on those charges. If the Parole Services Section dismisses all contested charges, the report will be submitted to the Parole Board to determine whether to reinstate the parolee on parole or revoke parole. If parole is revoked, the Parole Board also shall determine when the parolee will be reparaoled or reconsidered for parole, consistent with PD 06.05.104 "Parole Process"
- V. All charges to which the parolee does not plead guilty or no contest shall be scheduled for a parole violation hearing, unless dismissed by the Parole Services Section. Prior to the hearing, the parolee shall be provided a Parole Violation: Request for Appointed Attorney (CFJ-496) form to be completed by the parolee. If it is determined that the prisoner is indigent, an attorney shall be appointed to represent the parolee. The Parole Services Section shall be notified whenever an attorney is to be appointed. The Parole Services Section shall ensure an attorney is appointed as directed. The attorney's fees shall be paid by the Department.
- W. A parolee shall be provided reasonable prior written notice of the time, date, location, and purpose of the parole violation hearing. The hearing will be conducted on the record within 45 calendar days after the date the parolee became available for return to the Department, unless the hearing is waived in writing by the parolee, the parolee's attorney, or, if the preliminary hearing was postponed upon request of the parolee, by the Parole Board. A parolee is available for return to the Department when s/he is being held in custody solely due to parole violation charges. The FOA Deputy Director shall be notified in writing if the hearing is not conducted within 45 calendar days as required above. In such cases, the hearing will be conducted as soon as possible; the parolee shall not be released pending disposition of the hearing.
- X. A parolee is entitled to the following at the hearing:
1. Full disclosure of the evidence against him/her.
  2. To testify and present relevant witnesses and documentary evidence.
  3. To confront and cross examine adverse witnesses, unless the hearing officer determines on the record that disclosure of the identity of a witness may subject the witness to the risk of harm.
  4. To present other relevant evidence in mitigation of the charges.
- Y. Based on the evidence presented at the hearing, the Parole Board member or hearing officer will determine by a preponderance of the evidence whether the parolee violated a condition of parole. Charges not sustained will be dismissed; if none of the charges are sustained, the parolee shall be reinstated on parole, subject to Paragraph Z. A written report of the Parole Board member's or hearing officer's findings of fact/conclusions of law, and, if any of

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the charges are sustained, a recommendation whether parole should be revoked will be submitted to the Parole Board. The Parole Board shall determine whether to reinstate the parolee on parole or revoke parole. If parole is revoked, the Parole Board also shall determine when the parolee will be reparaoled or reconsidered for parole, consistent with PD 06.05.104 "Parole Process".

- Z. If none of the charges are sustained and the parolee will be reinstated on parole as a result, the FOA Deputy Director or designee may request the Administrator of the Office of Legal Affairs to review the hearing decision. Notice of the intent to request a review shall be served on the Administrator, the Parole Board member or hearing officer who conducted the hearing, and the parolee and his/her attorney within one business day after the hearing decision. The parolee shall remain in custody pending the review by the Administrator if the notice is served prior to the parolee being released. In such cases, the hearing report shall be forwarded to the Administrator within two business days after service of the notice; the request to review the hearing decision shall be forwarded within three business days after service of the notice. The Administrator shall review the request and determine in writing whether a new hearing is warranted within two business days after receipt of the OFP request to review the hearing decision. A copy of the Administrator's decision shall be served on the FOA Deputy Director, the Parole Board member or hearing officer who conducted the hearing, and the parolee and his/her attorney. If the Administrator determines that a new hearing is warranted, it shall be conducted within seven business days after issuance of the Administrator's decision unless a postponement is requested in writing by the parolee or his/her attorney.
- AA. In all cases, the final decision regarding revocation of parole shall be made by the Parole Board in accordance with Administrative Rule 791.7765. Whenever the Parole Board revokes parole, written findings of fact and the reasons for revocation shall be provided to the parolee within 60 calendar days after the parolee became available for return to the Department.

#### PROCEDURES

- BB. The FOA Deputy Director shall ensure that procedures are developed as necessary to implement requirements set forth in this policy directive; this shall be completed within 60 calendar days after the effective date of the policy directive. This requirement includes ensuring that their existing procedures are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed.

#### AUDIT ELEMENTS

- CC. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self audit of this policy, pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

APPROVED: DHH 02/07/13